

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN A RICHARDSON III,

Plaintiff,

v.

MARGARET GILBERT,

Defendants.

Case No. C19-5525 BHS-TLF

ORDER DENYING MOTION FOR  
RECONSIDERATION OF MOTION  
FOR APPOINTMENT OF  
COUNSEL

This matter comes before the Court on plaintiff's motion for reconsideration (Dkt. 36) of plaintiff's motion for appointment of counsel (Dkt. 30). Plaintiff is proceeding in this action *pro se and in forma pauperis*. The Court construes plaintiff's motion as a renewed motion for appointment of counsel.

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is discretionary, not mandatory."). In "exceptional circumstances," a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

Plaintiff asserts that his situation has changed since the Court's order denying plaintiff's motion to appoint counsel (Dkt. 33) to constitute exceptional circumstances

1 justifying appointment of counsel. Plaintiff asserts that as of October 1, 2020, library  
2 policies at Washington State Penitentiary have changed to limit clearance for individual  
3 litigants, including plaintiff, to access the law library no more than a couple days a  
4 month. Dkt. 37 at 1. Plaintiff professes to have insufficient medical knowledge to  
5 address the evidence submitted by defendants in their motion for summary judgment,  
6 including plaintiff's treatment records. *Id.* at 2. He asserts that he is unable to respond to  
7 the defendants' motion without assistance with both legal and medical expertise. *Id.*  
8 Plaintiff asserts that the regular library at the penitentiary is closed indefinitely due to the  
9 COVID-19 pandemic, and he is an indigent litigant with a tenth-grade education and  
10 without internet. *Id.* at 3. Plaintiff requests that the court consider his lack of formal  
11 training and education fundamentally detrimental to his ability to litigate his case. *Id.*

12       The Court does not find these to be exceptional circumstances calling for  
13 appointment of counsel in plaintiff's case. Defendants' motion for summary judgment  
14 (Dkt. 25), presently before the Court, refers to plaintiff's treatment records to argue that  
15 plaintiff does not have a sufficient factual basis to bring his claims. Plaintiff asserts that  
16 he lacks the ability articulate his claims *pro se* "in light of the complexity of the legal  
17 issues involved." Dkt. 36; see *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991).

18       Yet the mere inclusion of records of plaintiff's treatment raise factual, not legal  
19 concerns, and it does not complicate this case beyond the point that a typical *pro se*  
20 litigant could argue. Regarding plaintiff's treatment, plaintiff has clearly pled factual  
21 allegations of defendants' misconduct in his complaint. A litigant's less-than-perfect  
22 medical knowledge is not sufficient basis for appointment of legal counsel. Plaintiff has  
23 not shown that he fails to grasp the contours of his own case or that he cannot articulate  
24  
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1 the facts on which he relies to make his claims. See *Agyeman v. Corrections Corp. of*  
2 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004). Likewise, plaintiff's lack of higher  
3 education or internet access are insufficient to require appointment of counsel. See  
4 *Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990) (noting that contended  
5 exceptional factors were "difficulties which any litigant would have in proceeding pro  
6 se").

7 Thus, plaintiff has not demonstrated that he is unable to present his claims to this  
8 Court without counsel or to show that exceptional circumstances require the Court to  
9 appoint counsel at this stage. See generally, *Mallard v. U.S. Dist. Court for Southern*  
10 *dist. of Iowa*, 490 U.S. 296, 310 (1989) (28 U.S.C. § 1915 does not allow a federal court  
11 to coercively appoint counsel); *James v. Eli*, 889 F.3d 320, 330-331 (7th Cir. 2018) (*en*  
12 *banc*) (district courts may ask, but not compel, a lawyer to represent an indigent litigant).

13 The Court DENIES the motion for reconsideration (Dkt. 36). Plaintiff will be  
14 allowed to renew his motion to appoint counsel if, later in the proceedings, exceptional  
15 circumstances would require appointment of counsel.

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17 Dated this 28th day of October, 2020.

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21 Theresa L. Fricke  
22 United States Magistrate Judge  
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